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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JESUS MENDEZ, individually and on) Case No.
behalf of all others similarly situated,)
) **CLASS ACTION**
Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**
)
vs.)
)
MARS IT CORP. d/b/a MARS)
SOLUTIONS GROUP, and DOES 1)
through 10, inclusive, and each of them,)
)
Defendants.)
)
)
)
)
) **DEMAND FOR JURY TRIAL**
)
)

Plaintiff JESUS MENDEZ (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of Defendant, in negligently, knowingly,
5 and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of
6 the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
9 a resident of California, seeks relief on behalf of a Class, which will result in at
10 least one class member belonging to a different state than that of Defendant, a
11 Wisconsin corporation. Plaintiff also seeks \$1,500.00 in damages for each call in
12 violation of the TCPA, which, when aggregated among a proposed class in the
13 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
14 Therefore, both diversity jurisdiction and the damages threshold under the Class
15 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.
16 Jurisdiction is also proper under 28 U.S.C. § 1331 because Plaintiff's claims arise
17 under a law of the United States, the TCPA.

18 3. Venue is proper in the United States District Court for the Northern
19 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of
20 the events or omissions giving rise to Plaintiff's claims occurred within this
21 District.

22 **PARTIES**

23 4. Plaintiff, JESUS MENDEZ ("Plaintiff"), is a natural person residing
24 in San Jose, California, and is a "person" as defined by 47 U.S.C. § 153 (39).

25 5. Defendant, MARS IT CORP. d/b/a MARS SOLUTIONS GROUP
26 ("Defendant"), is a recruiting company, and is a "person" as defined by 47 U.S.C.
27 § 153 (39).

28 6. The above-named Defendant, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning on or about August 30, 2019, Plaintiff received an unsolicited text message from Defendant on Plaintiff’s cellular telephone number ending in -3228, in an attempt to solicit Plaintiff to purchase Defendant’s services.

9. During this time, Defendant began to use Plaintiff’s cellular telephone for the purpose of sending Plaintiff spam advertisements and/or promotional offers, via text messages, including a text message sent to and received by Plaintiff on or about August 30, 2019 from Defendant’s phone number, (262) 372-6471.

10. On or about August 30, 2019, Plaintiff received a text from Defendant that read: “Hi Jesus, My Name is Shane i am a Lead Recruiter at Mars Solutions Group and i am contacting you regarding a job opening just want to check and see if you are available in the job market. i have send you the job details to your email please check my email or give me a call on my direct line 262-299-”.

11. This text message placed to Plaintiff’s cellular telephone was placed via Defendant’s *SMS Blasting Platform*, i.e., an “automatic telephone dialing

1 system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) as prohibited by 47 U.S.C.
2 § 227(b)(1)(A).

3 12. The telephone number that Defendant, or its agent, called was
4 assigned to a cellular telephone service for which Plaintiff incurs a charge for
5 incoming calls pursuant to 47 U.S.C. § 227(b)(1).

6 13. Defendant’s text messages constituted calls that were not for
7 emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

8 14. During all relevant times, Defendant did not possess Plaintiff’s “prior
9 express consent” to receive text messages using an automatic telephone dialing
10 system on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

11 **CLASS ALLEGATIONS**

12 15. Plaintiff brings this action individually and on behalf of all others
13 similarly situated, as a member the classes (hereafter “The Class”) defined as
14 follows:

15 All persons within the United States who received any
16 solicitation/telemarketing text messages from Defendant
17 to said person’s cellular telephone made through the use
18 of any automatic telephone dialing system and such
19 person had not previously consented to receiving such
20 calls, or who had revoked such consent, within the four
21 years prior to the filing of this Complaint through the date
22 of class certification.

23 16. Plaintiff represents, and is a member of, The Class, consisting of all
24 persons within the United States who received any solicitation/telemarketing text
25 messages from Defendant to said person’s cellular telephone made through the use
26 of any automatic telephone dialing system and such person had not previously
27 consented to receiving such calls, or who had revoked such consent, within the four
28 years prior to the filing of this Complaint through the date of class certification.

17. Defendant, its employees and agents are excluded from The Class.

1 Plaintiff does not know the number of members in The Class, but believes the Class
2 members number in the thousands, if not more. Thus, this matter should be
3 certified as a Class Action to assist in the expeditious litigation of the matter.

4 18. The Class is so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Class
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Class includes thousands of members. Plaintiff alleges that The Class
9 members may be ascertained by the records maintained by Defendant.

10 19. Plaintiff and members of The Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and Class members via their cellular telephones thereby causing Plaintiff and Class
13 members to incur certain charges or reduced telephone time for which Plaintiff and
14 Class members had previously paid by having to retrieve or administer messages
15 left by Defendant during those illegal calls, and invading the privacy of said
16 Plaintiff and Class members.

17 20. Common questions of fact and law exist as to all members of The
18 Class which predominate over any questions affecting only individual members of
19 The Class. These common legal and factual questions, which do not vary between
20 Class members, and which may be determined without reference to the individual
21 circumstances of any Class members, include, but are not limited to, the following:

- 22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendant made any telemarketing/solicitation
24 call/text message (other than a call made for emergency
25 purposes or made with the prior express consent of the called
26 party) to a Class member using any automatic telephone dialing
27 system to any telephone number assigned to a cellular telephone
28 service;

1 b. Whether Plaintiff and the Class members were damaged
2 thereby, and the extent of damages for such violation; and

3 c. Whether Defendant should be enjoined from engaging in such
4 conduct in the future.

5 21. As a person that received telemarketing/solicitation calls from
6 Defendant using an automatic telephone dialing system, without Plaintiff's prior
7 express consent, Plaintiff is asserting claims that are typical of The Class.

8 22. Plaintiff will fairly and adequately protect the interests of the members
9 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
10 class actions.

11 23. A class action is superior to other available methods of fair and
12 efficient adjudication of this controversy, since individual litigation of the claims
13 of all Class members is impracticable. Even if every Class member could afford
14 individual litigation, the court system could not. It would be unduly burdensome
15 to the courts in which individual litigation of numerous issues would proceed.
16 Individualized litigation would also present the potential for varying, inconsistent,
17 or contradictory judgments and would magnify the delay and expense to all parties
18 and to the court system resulting from multiple trials of the same complex factual
19 issues. By contrast, the conduct of this action as a class action presents fewer
20 management difficulties, conserves the resources of the parties and of the court
21 system, and protects the rights of each Class member.

22 24. The prosecution of separate actions by individual Class members
23 would create a risk of adjudications with respect to them that would, as a practical
24 matter, be dispositive of the interests of the other Class members not parties to such
25 adjudications or that would substantially impair or impede the ability of such non-
26 party Class members to protect their interests.

27 25. Defendant has acted or refused to act in respects generally applicable
28 to The Class, thereby making appropriate final and injunctive relief with regard to

1 the members of the Class as a whole.

2 **FIRST CAUSE OF ACTION**

3 **Negligent Violations of the Telephone Consumer Protection Act**

4 **47 U.S.C. § 227(b)**

5 26. Plaintiff repeats and incorporates by reference into this cause of action
6 the allegations set forth above at Paragraphs 1-25.

7 27. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple negligent violations of the TCPA, including but not limited to each
9 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
10 *47 U.S.C. § 227(b)(1)(A)*.

11 28. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
12 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
13 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

14 29. Plaintiff and the Class members are also entitled to and seek injunctive
15 relief prohibiting such conduct in the future.

16 **SECOND CAUSE OF ACTION**

17 **Knowing and/or Willful Violations of the**

18 **Telephone Consumer Protection Act**

19 **47 U.S.C. § 227(b)**

20 30. Plaintiff repeats and incorporates by reference into this cause of action
21 the allegations set forth above at Paragraphs 1-25.

22 31. The foregoing acts and omissions of Defendant constitute numerous
23 and multiple knowing and/or willful violations of the TCPA, including but not
24 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
25 and in particular *47 U.S.C. § 227(b)(1)(A)*.

26 32. As a result of Defendant's knowing and/or willful violations of *47*
27 *U.S.C. § 227(b)*, Plaintiff and the Class members are entitled an award of \$1,500.00
28 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*

1 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

2 33. Plaintiff and the Class members are also entitled to and seek injunctive
3 relief prohibiting such conduct in the future.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

6 **FIRST CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. § 227(b)**

- 9 • As a result of Defendant's negligent violations of 47 U.S.C. §
10 227(b)(1), Plaintiff and the Class members are entitled to and request
11 \$500 in statutory damages, for each and every violation, pursuant to
12 47 U.S.C. § 227(b)(3)(B).
13 • Any and all other relief that the Court deems just and proper.

14 **SECOND CAUSE OF ACTION**

15 **Knowing and/or Willful Violations of the**
16 **Telephone Consumer Protection Act**

17 **47 U.S.C. § 227(b)**

- 18 • As a result of Defendant's willful and/or knowing violations of 47
19 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to
20 and request treble damages, as provided by statute, up to \$1,500, for
21 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and
22 47 U.S.C. § 227(b)(3)(C).
23 • Any and all other relief that the Court deems just and proper.

24 34. Pursuant to the Seventh Amendment to the Constitution of the United
25 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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1 Respectfully Submitted this 11th Day of December, 2020.

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3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

4 By: /s/ Todd M. Friedman
5 Todd M. Friedman
6 Law Offices of Todd M. Friedman
7 Attorney for Plaintiff
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